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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
09/944,708	08/31/2001	Thomas Joseph Kelly	13DV14047	1769

31316 7590 10/19/2004

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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

### DETAILED ACTION

1. The Appeal Brief filed on 6/14/04 is defective for failure to comply with one or more of the provisions of 37 CFR 41.37.
2. The heading "Summary of Invention" should be replaced with "Summary of claimed subject matter". Under this heading, a concise explanation of the subject matter defined in each of the independent claims involved in the appeal should be included with a reference to the specification by page and line number, and to the drawing, by reference character. See 37 CFR 41.37(c)(1)(v). The appeal brief does not refer to the specification by drawing and reference character. References to the prior art or "conventional commercial practice" should be removed since this section of the appeal brief should be a summary of the claimed subject matter.
3. To avoid confusion, applicant is requested to remove Appendix 2 which include the allowed claims because only the claims involved in appeal is required in the appendix of claims.
4. Regarding the argument section of the brief, note that the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately. Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim. 37 CFR 41.37(c)(1)(vii).
5. To avoid dismissal of the appeal, applicant must file ONE COPY of a complete new brief in compliance with 37 CFR 41.37 within the longest of any of the following three time periods:  
(1) one month or thirty days from the mailing date of this notification, whichever is longer; (2)

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two months from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. Extensions of these time periods may be granted under 37 CFR 1.136.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Jimenez whose telephone number is (703) 306-5965. The examiner can normally be reached on Monday-Friday between 5:30 a.m.-2:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (703) 308-1789. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Marc Jimenez  
Patent Examiner  
AU 3726

**MJ**

October 18, 2004